16.

SUPREME COURT OF THE UNITED STATES.

No. 82.

BENJAMIN F. MORGAN, Pl'ff in Error,

vs.

ALFRED G. CURTENIUS and JOHN L. GRISWOLD.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF ILLINOIS.

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BENJAMIN F. MORGAN
vs.
ALFRED G. CURTENIUS and JOHN L. GRISWOLD.

Pleas in the Circuit Court of the United States of America for the District of Illinois, held at the City of Springfield, in the District aforesaid, before the Honorable Nathaniel Pope, Judge of the District Court of the United States for the District of Illinois, and in the absence of the Hon. John McLean, one of the Justices of the Supreme Court of the United States *pro tempore*, assigned to the 7th Judicial Circuit, sole Judge of said Circuit Court, on Tuesday, the 11th day of December, of the term of December, in the year of our Lord one thousand eight hundred and forty-nine, and of our Independence the 73d year.

WM. POPE,
Clerk.

DISTRICT OF ILLINOIS, ss:

Benjamin F. Morgan puts in his place H. O. Merriman his Attorney, against Alfred G. Curtenius and John L. Griswold, in a plea of ejectment.

DISTRICT OF ILLINOIS, *sct:*

Be it remembered that on the sixth day of January, in the year eighteen hundred and forty-seven, the said plaintiff by his attorney, came into the Clerk's Office of said Court and filed his certain declaration in ejectment against the said defendants, together with notice and affidavit of service, which is in the words and figures following, to wit:—

Benjamin F. Morgan, who is a citizen of the State of Massachusetts, in the United States, plaintiff in this suit, complains of Alfred G. Curtenius and John L. Griswold, who are citizens of this State of Illinois, the defendants in this suit, of a plea wherefore they, the said defendants, with force and arms, &c., entered into the possession of a part of the southeast fractional quarter of section No. 9, in township No. eight, north of the base line of range No. eight, west of the fourth principal meridian, in the county of Peoria, in the State of Illinois.

For that whereas, heretofore, to wit: On the first day of January, A. D. 1847, he, the said plaintiff, was possessed, under a title in fee simple, of one undivided half part of block No. fifty-two in Bigelow and Underhill's Addition to the City of Peoria, and being part of the southeast fractional quarter of section No. nine, in township No. eight, north of the base line of range No. eight, east of the fourth principal meridian; and being so possessed thereof, afterwards, to

wit: on the second day of January, A. D. 1847, said defendants entered into possession of said premises, to wit: that part of said fractional quarter, now known and designated on the maps or plat of the city of Peoria, in said county of Peoria, as block No. fifty-two in Bigelow's and Underhill's Addition to Peoria; and which said premises of said plaintiff, so possessed by said defendants, are worth a large sum, to wit: the sum of two thousand dollars, and exceed in value the sum of five hundred dollars.

Wherefore the said plaintiff says that he is injured, and has sustained damages to a large amount, to wit: the sum of five hundred dollars, and therefore he sues, &c.

J. BUTTERFIELD
and H. O. MERRIMAN,
Att'ys for pl'ff.

To Alfred G. Curtenius and John L. Griswold:

Gents: Take notice, that on Wednesday, the 6th day of January, 1847, at and during the present December Term of the Circuit Court of the United States for the District of Illinois, a declaration, of which the foregoing is a copy, will be filed in the office of the Clerk of said Court: that upon filing the same, a rule will be entered requiring you, the said defendants, to plead to the said declaration within twenty days after the entry of such rule: also, that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises claimed in said declaration.

Yours respectfully,

BENJAMIN F. MORGAN,
Per J. BUTTERFIELD
and H. O. MERRIMAN,
his Att'ys.

Jan'y 4, 1847.

State of Illinois,
Peoria County, ss:

Cephas H. Washburn, being first duly sworn, deposes that he delivered to Alfred G. Curtenius and John L. Griswold, each a copy of the within declaration, and also a notice, of which the within is a copy, at Peoria, this 4th day of January, A. D. 1847.

CEPHAS H. WASHBURN.

I, Jacob Gale, Clerk of the Circuit Court, within and for the county, do certify, that on this 4th day of January, A. D. 1847, personally appeared before me Cephas H. Washburn, whose name appears subscribed to the foregoing affidavit, and made oath that the contents therein contained are true, in substance and in fact.

In testimony whereof I have hereunto set my hand and affixed

the seal of said Court at Peoria, this 4th day of January, A. D. 1847.

[L. S.] JACOB GALE,
Clerk.

This day—to wit: the 6th day of January, A. D. 1847, of the term of December, A. D. 1846—came the plaintiff by his attorneys and files his declaration, and the notice in writing attached; and on reading and filing the affidavit of a due service of a true copy of said declaration, and notice thereto annexed: On motion of said plaintiff by his attorneys, it is ordered that the defendants plead thereto in twenty days, or that their default be entered.

This day—to wit: the 18th day of January, A. D. 1847—came the said defendants by their attorney, and filed their plea, which is in the words and figures following, to wit:—

"And the said defendants, by E. N. Powell, their attorney, come and defend the force and injury when, &c., and say that they are not guilty of unlawfully withholding the premises claimed by the said plaintiff, as he hath in his said declaration alleged; and of this they put themselves upon the country.

E. N. POWELL,
Att'y for Def'ts.

This day—to wit: the 16th day of June, of the term of June, A. D. 1847—"Ordered that this cause be continued at plaintiff's cost, and that the plaintiff have leave to amend his declaration."

This day—to wit: the 2d day of December, A. D. 1847—came the said plaintiff by his attorneys, and files his amendment to declaration herein, which is in the words and figures following, to wit:—

"And said plaintiff, by leave of the Court for that purpose first had and obtained, further complains: For that whereas, heretofore, to wit: on the first day of January, A. D. one thousand eight hundred and forty-seven, said plaintiff was possessed of a certain tract or parcel of land, to wit: a part of the southeast fractional quarter of fractional section No. nine (9), in township numbered eight (8), north of range numbered eight (8), east of the fourth principal meridian in the State of Illinois, described and bounded as follows, to wit: Commencing at a post on the bank of the Illinois River, thence running north forty and one half degrees, west three chains and four links to a post, from which the west corner of Curtenius and Griswold's warehouse bears south forty-two and one half degrees, east fifty-seven links; thence north, fifty and one half degrees east, two chains and twenty-four links to a post, on the line between the southeast and northeast quarters of said section numbered nine (9), from which the north corner of Curtenius and Griswold's store bears south thirty-eight and one-half degrees west, eight links; thence east, on the line between said quarter sections, four chains and eighty links to a post on the bank of said river; thence down along the bank of

said river to the place of beginning. And said plaintiff, being so possessed thereof, that said defendants afterwards, to wit: on the second day of January, A. D. 1847, entered into said premises, and that they unlawfully withhold from said plaintiff the possession thereof, to the damage of said plaintiff of one thousand dollars.

And said plaintiff further avers, that he claims title in fee to said premises; and that said plaintiff, at the time of the commencement of this suit, was and still is a citizen of the State of Massachusetts; and that said defendants are citizens of the State of Illinois; and that the said premises exceed in value the sum of five hundred dollars; wherefore he sues, &c.

H. O. MERRIMAN,
J. BUTTERFIELD,
Att'ys for Pl'ff.

This day—to wit: the 29th day of December, of the term of December, A. D. 1847—"by consent of parties, it is ordered that this cause be continued."

This day—to wit: the 14th day of June, of the term of June, A. D. 1848—came the parties by their attorneys, and, issue having been joined, thereupon came a jury, to wit: James Short, Charles Trumbull, Peter G. Cowardin, T. B. Carter, James W. Davidson, Gersham Flagg, John Evans, N. B. Webber, A. G. Whitesides, Smith Turner, and James C. Morrison, who being duly elected, tried, and sworn well and truly to try the issue joined, upon their oaths do say: "We, the jury, find the defendants not guilty." It is therefore considered and adjudged by the Court that the said defendants recover of and from the said plaintiff their costs and charges by them about their defence in this behalf expended, and that they have execution therefor, &c.

This day—to wit: the day and year last aforesaid—"It is ordered by the Court, on motion of plaintiff's attorneys, that defendants deposit for thirty days with the Clerk of this Court, the deeds and papers used as evidence in the above entitled cause."

This day—to wit: the day and year last aforesaid—"came again the said plaintiff by his attorney, and filed his bill of exceptions herein, and moved the Court to grant him a writ of error; which said writ of error is allowed by the Court to issue on the filing of a bond in the penal sum of five hundred dollars, with John Frink or Martin O. Walker as security."

This day—to wit: the 14th day of June, A. D. 1848—came the plaintiff by his attorneys, and filed his bill of exceptions, which is in the words and figures following, to wit:—

"Be it remembered, that this cause came on to be tried before the Circuit Court of the United States for the District of Illinois, at the June Term of said Court, in the year 1848, and on the trial of said cause, the plaintiff, to maintain the issues on his part, produced and

read in evidence a patent from the United States to John L. Bogardus, in the words and figures following, to wit: [Here insert it.]

The plaintiff then proved that said John L. Bogardus died on the 2d day of June, A. D. 1838, leaving two heirs, one of which, a daughter named Peoriana Elizabeth, and a son, Wm. M. Bogardus; the son is since deceased, and the other, the said Peoriana E. Bogardus, is now about sixteen years of age.

The plaintiff then offered and read in evidence to the jury a certified copy of the last will and testament of said John L. Bogardus, and letters testamentary thereon to Marion Bogardus, executrix named in said bill, which said will and letters are in the words and figures following, to wit: [Here insert them.]

The plaintiff then produced, offered, and read in evidence to the jury a deed from said Marion Bogardus, executrix, &c. to Seth L. Cole, which is in the words and figures following, to wit: [Here insert it.]

The plaintiff then produced, offered, and read to the jury two deeds, from Seth L. Cole to John Frink, in the words and figures following, to wit: [Here insert them.]

The plaintiff then produced, offered, and read in evidence to the jury a deed from said John Frink to the plaintiff, in the words and figures following, to wit: [Here insert it.]

The plaintiff then proved, and offered in evidence and read to the jury a certified copy of the record of a survey of George C. McFadden, who was proved to have been County Surveyor of Peoria County, which certificate is in the words and figures following, to wit: [Here insert it.]

The plaintiff then proved that the defendants at the time of the commencement of this suit, and still are, in possession of the land specified in said certificate, and claimed in said declaration.

The plaintiff here rested his case.

The defendants then produced and offered to read to the jury as evidence, a deed from John L. Bogardus to Isaac Underhill, dated August 5, 1834, in the words and figures following, to wit: [Here insert it.] To the reading of which as evidence to the jury, the plaintiff by his counsel objected; and the Court overruled the objection, and permitted said deed to be read as evidence to the jury, which was done; to which decision of said Court in overruling said objection and permitting said deed to be read in evidence to the jury, the plaintiff then and there excepted.

The defendants' counsel then read in evidence a certificate of ———, in the words and figures following, to wit: [Here insert it.]

The defendants then proved and read in evidence to the jury a certificate of the Register of the Land Office, at Quincy, Illinois, in the words and figures following, to wit: [Here insert it.]

The defendants then proved by Isaac Underhill that he made the entry and took said last certificate in the name of said Bogardus,

and paid the money therefor, no part of which was furnished by said Bogardus.

The defendants here rested their case.

The plaintiff then proved and read in evidence to the jury a certificate of Sam'l Holmes, Register of said Land Office, in the words and figures following, to wit: [Here insert it.]

The plaintiff also proved and read in evidence to the jury another certificate of said Holmes, Register of said Land Office, in the words and figures following to wit: [Here insert it.]

This was all the material evidence given on the trial of said cause.

The Court then charged the jury that the said deed from said Bogardus to Underhill conveyed the title acquired by said Bogardus under said patent, and that under that deed the title acquired by said patent enured to the benefit of said Underhill, and was a good defence to the plaintiff's action under the statute of the State of Illinois.

To which said charge and instruction of the Court to the jury the plaintiff excepted, and the jury returned a verdict for the defendants. It was proved to Court that the said premises described in the declaration in this cause was of the value of rising two thousand dollars.

The plaintiff reduced his said exception to writing, and requested the judges of the said Court to sign and seal the same, which is done this 14th day of June, during the said June term of the said Court, 1848.

JOHN McLEAN. [SEAL.]

This day—to wit: the 8th day of June, of the term of June, A. D. 1849—came the plaintiff, by his attorney, and moved the Court to vacate the judgment in this cause, entered at the June term, A. D. 1848, of this Court, and to grant him a new trial under the provisions of the statute; and it appearing to the satisfaction of the Court that the said plaintiff has paid all the costs and damages recovered and taxed in this cause, it is therefore ordered and adjudged by the Court that said judgment be vacated, annulled, set aside, and for nothing held, and that a new trial be had herein.

This day—to wit: the 11th day of June, of the term last aforesaid —"it is ordered that the cause be continued to the next December term of this Court."

This day—to wit: the 11th day of December, of the term of December, A. D. 1849—came the said parties, by their attorneys, and, issue being joined, thereupon came a jury, to wit: D. L. Gregg, E. G. Johns, B. M. Cox, A. C. Dickson, W. A. Hacker, Thomas Bennett, William H. Herndon, William Watson, James Maxcy, William M. Farnsworth, A. Stone, and R. W. Diller, who being duly elected, tried, and sworn well and truly to try the issue joined, upon their oaths say: "We, the jury, find the defendants not guilty; we further find that the plaintiff has not an estate in fee simple to the premises in the plaintiff's declaration described, to wit: one undivided half part of block No. fifty-two in Bigelow & Underhill's Addition to the

City of Peoria, and being part of the southeast fractional quarter of section No. nine in township No. eight, north of the base line in range No. eight, east of the fourth principal meridian." It is therefore considered and adjudged by the Court that said defendants recover of and from the said plaintiff their costs and charges about their defence herein expended, and they have execution therefor, &c.

This day—to wit: the 22d day of December, A. D. 1849—came the said plaintiff by his attorneys, and filed his bill of exceptions; which is as follows, to wit:—

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vs.
ALFRED G. CURTENIUS and JOHN L. GRISWOLD.

Be it remembered, that on this 11th day of December, A. D. 1849, at and during the said term of said Court, this cause coming on for trial, the plaintiff, to maintain the issue on his part, read in evidence, 1st, a patent from the United States to John L. Bogardus, dated January 5th, 1838, in the words and figures following, to wit:—

(*Certificate No.* 13,258.)

UNITED STATES OF AMERICA:

To all to whom these presents shall come, greeting:—

Whereas, John L. Bogardus, of New York County, New York, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Quincy, whereby it appears that full payment has been made by the said John L. Bogardus, according to the propositions of *of* the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the southeast fractional quarter of section nine, in township eight, north of range eight, east, in the district of lands subject to sale at Quincy, Illinois, containing twenty-three acres, and ninety-three hundredths of an acre—according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been purchased by the said John L. Bogardus. Now know ye: That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said John L. Bogardus, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, unto the said John L. Bogardus, and to his heirs and assigns forever; subject, however, to the rights of any and all persons claiming under the Act of Congress of 3d March, 1823, entitled "An Act to confirm certain claims to Lots in the village of Peoria, in the State of Illinois."

In testimony whereof, I, Martin Van Buren, President of the

United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereto affixed.

Given, under my hand, at the City of Washington, the fifth day of January, in the year of our Lord, one thousand eight hundred and thirty-eight, and of the Independence of the United States the sixty-second.

By the President,

[L. S.] MARTIN VAN BUREN.

By A. VAN BUREN,

Secretary.

H. M. GARLAND,

Recorder of the General Land Office.

(Recorded vol. i. page 149.)

2d. Said plaintiff proved the death of said Bogardus on the 2d day of June, A. D. 1838.

3d. Said plaintiff then exhibited and read in evidence to the jury a duly certified copy of the last will and testament of said John L. Bogardus, and of the letters testamentary, duly issued according to law by the Probate Justice of the Peace of the County of Peoria, in the State of Illinois, and proof of said will, which said letters, will, and proof are in the words and figures following, to wit:—

At a special term of the Probate Court within and for the County of Peoria and State of Illinois, at the office of the Probate Justice of the Peace within and for said county, held on the seventh day of July, Anno Domini one thousand eight hundred and thirty-eight, the following proceedings were had in an application of Marion Bogardus for letters testamentary to be granted to her on the last will and testament of John L. Bogardus, deceased, to wit:—

[Probate Court, Special Term: Saturday, July 7th, 1838.]

Application for letters testamentary on the last will and testament of John L. Bogardus, deceased.

The Court, after the necessary proof having been made of the validity of said will, issued letters testamentary to Marion Bogardus, wife of the deceased, in the following form, viz:—

Letters Testamentary.

STATE OF ILLINOIS,
Peoria County, ss:

The People of the State of Illinois, to all to whom these presents shall come, greeting:—

Know ye, that whereas John L. Bogardus, late of the County of Peoria, and State of Illinois, died on or about the second day of

June, A. D. 1838, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving, at the time of his death, property in this State, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same; and, inasmuch as it appears that Marion Bogardus has been appointed executrix in and by the said last will and testament, to execute the same, and to the end that the said property may be preserved for those who shall appear to have a legal right or interest therein, and that said will may be executed according to the request of the said testator; we do hereby authorize her, the said Marion Bogardus, as such executrix, to collect and secure all and singular, the goods and chattels, rights and credits, which were of the said John L. Bogardus, at the time of his decease, in whosesoever hands or possession the same may be found in this State; and well and truly to perform and fulfil all such duties as may be enjoined upon her by the said will, so far as there shall property, and the law charge her, and in general, to do and perform all other acts which now are or hereafter may be required of her by law.

Witness Geo. B. Parker, Probate Justice of the Peace in and for the said county of Peoria, at his office, in Peoria, this 7th day of July, A. D. 1838.

GEO. B. PARKER,
P. J. P. P. Co.

STATE OF ILLINOIS,
Peoria County:

I, Wm. H. Fessenden, Probate Justice of the Peace of said county, do hereby certify the above is a true copy of the letters testamentary granted to Marion Bogardus on estate of John L. Bogardus, as recorded in the Probate Office of Peoria County.

Witness my hand and seal at Peoria, this 12th day of June, A. D. 1847.

[SEAL.] WM. H. FESSENDEN,
P. J. P. P. Co.

Will.

I, John L. Bogardus, late of the City and State of New York, now of Peoria, in the county of Peoria, and State of Illinois, do make and publish this, my last *will* and testament, hereby revoking and making void all former wills by me at any time heretofore made. As to my estate, both real and personal, I dispose of the same as follows, to wit:—

First. I give and bequeath to my beloved wife, Marion Bogardus, all my personal estate, of which I shall be the owner of at the time of my decease, intending hereby to include all my moneys,

debts due to me, choses in action, and all my goods and chattels, of what nature soever, or wheresoever the same may be.

Secondly. I give and devise to my said wife all my real estate, wheresoever the same may be situated, and to which I have any claim or title whatsoever, either in law or equity; to have and to hold the *the* same till my daughter, Peorianna Elizabeth Bogardus, shall arrive at the age of twenty-one years, and then to be divided and disposed of as hereinafter directed, and subject to such right to sell and dispose of the same as hereinafter provided. And I hereby authorize and empower my said wife, as executrix of this my last will and testament, to sell any of the real estate of which I shall die seized, or to which I have any equitable claim or title, and may use, expend, and appropriate the proceeds thereof as follows, to wit: First. To pay all my just debts and funeral charges; second, to support and maintain herself and family, and children, and grandchildren, and to educate such as are or shall be under the age of twenty-one years, in a manner becoming their state and condition. Thirdly. The remainder arising under such sales shall be put out on interest, or otherwise safely invested, to be finally disposed of as is hereinafter provided.

Thirdly. I give and bequeath to my said wife all the rents, issues and profits of my real estate, to be her own, and at her absolute control and disposal, until my said daughter shall arrive at the age of twenty-one years.

Fourthly. I hereby authorize and empower my said wife, as my executrix, to permit my son, William McClemant Bogardus, to occupy, for farming purpose, any one quarter section of my land *free from rent*, or on such terms as she shall deem best for his interest; or she may, at any time before my said daughter shall arrive at the age of twenty-one years, convey to my said son in fee simple, without any payment or compensation therefor, one quarter section of my land, and on the final settlement and distribution of my estate, according to the tenor and provisions of this instrument, the same shall not be taken into the account as part of my estate, but each of the distributors shall receive his or her full third part thereof, and no more, of what remains over and above said quarter section. Provided, however, that my said wife shall not make such gratuitous conveyance of said quarter section to my said son, till the expiration of three years from and after my decease, nor unless he shall have erected or cause to be erected on said quarter section a comfortable dwelling-house, enclosed the whole quarter section with a good and substantial fence, and put at least twenty acres thereof under cultivation.

Fifthly. When my said daughter shall have arrived at the age of twenty-one years, the whole of the real estate aforesaid which shall remain unsold, except the quarter section which my said wife is authorized to convey, if the same shall be conveyed to my said son, shall be equally divided between my said wife and each of my child-

ren, so that each shall receive one-third part thereof, quantity and quality considered, to have and to hold, to them, their heirs and assigns, forever; such division to be made by three judicious persons, to be appointed by the Judge, for the time being, acting as the Chancellor of the Circuit Court of Peoria county, or such Judge as shall be the successor of the Circuit Court, if that shall not then exist by law; provided, nothing herein contained shall be so construed as to prevent an amicable division and partition of said real estate among the said devisees, by and between themselves, without the intervention of third persons, if they can agree to do the same amicably. If my said daughter shall die before she shall arrive at the age of twenty-one years, leaving no lawful issue of her body, then my said real estate, remaining unsold, shall be equally divided between my said wife and my said son, share and share alike, in the manner hereinbefore provided for the division between the three devisees; said division to be made at the said time as my said daughter would have arrived at the age of twenty-one years, if she had lived; in case my said son shall die before the time my said daughter would arrive at the age of twenty-one years, leaving no lawful issue, then said real estate remaining unsold shall be divided, at the time she shall arrive at the age of twenty-one years, equally between my said wife and daughter, share and share alike, the division to be made in the manner hereinbefore provided for a division among the three devisees. In case of the death of both of my said children, without lawful issue, then the whole of my said real estate shall go to my said wife, her heirs and assigns, in fee simple, to be at her sole disposal. But in case of the death of either or both of my said children, before my said daughter would arrive at the age of twenty-one years, lawfully begotten, then such child or children shall take the share that such child or children's parent would have taken if living. And in case my said wife shall die before my said daughter would arrive at the age of twenty-one years, then any trustee she may by deed appoint, or by her last will and testament, shall hold such real estate, take the rents and profits thereof for the use of my children, or the survivor of them, or his or her children; which, after paying the services of such trustee, shall be invested for their benefit, to be paid to them, or the survivor of them, or his or her child or children, lawfully begotten, at the expiration of the time my said daughter would arrive at the age of twenty-one years; and in case my said wife shall die without appointing any trustee, by deed or will as aforesaid, then the Judge for the time being acting as Chancellor in and for the county of Peoria, shall have power to appoint such judicious person as he shall deem proper to act as such trustee, and such trustee shall give bond with sufficient surety or securities to the Judge of Probate of said county, or in such manner as the acting Chancellor shall direct for the faithful discharge of his duties as trustee; and the said trustree when thus appointed, and having given bond as herein directed, shall have the same power to sell real estate, that is hereby given to

my said wife, and to execute and deliver all necessary and proper deeds, for the conveyance of the same; but the proceeds of said sale, after paying the expenses thereof, and the services of said trustee, shall be invested and secured for the future use and benefit of my said children, the survivor of them, or his or her child or children, as herein before provided. Should my said wife, or the trustee that may be appointed to act in her stead, make sale of so much of said real estate as to produce a balance over and above what shall be required for her support and maintenance of said children and grandchildren, as before herein provided, the same shall be divided among my said wife and children, or go to the survivor, or to their issue lawfully begotten, in the same manner and in the same proportion as is herein before provided for the division of said *estate real*, among them, or the survivor or survivors of them.

Sixthly. As I am the owner of the equitable interest in certain lands and real estate, the legal title of which is in other persons, who hold the same in trust for me, I hereby authorize my said wife, or the trustee that may be appointed to act in her stead, to take deeds of conveyance of the legal estate of such lands and real estate, at such times as she, or said trustee acting in her stead, shall deem proper; and when the same shall be so conveyed, it may be sold in the same manner, and the proceeds disposed of and appropriated in the same way; and if it shall not be sold before the time my said daughter would arrive at the age of twenty-one years, to be divided and distributed in the same manner as is herein before provided for the other real estate.

Seventhly. It is my desire to have a family vault or burial place provided on some part of the real estate now owned by me, in or near Peoria; I do therefore authorize and direct my executrix to select a lot from some of my land, of not less than one eighth of an acre, and to erect thereon a vault or tomb for the interment of my own remains, and other deceased members of my family and relatives; and when such selection shall be made, it shall remain for a place of interment forever, and not subject to sale, alienation.

Eighthly. I hereby authorize and empower my executrix in her said capacity, and during her continuing such exeutrix, to make, execute, acknowledge and deliver any and all deeds for the conveyance of any and all my real estate now owned by me, or to which she shall acquire a title by the provisions herein contained, or what she shall purchase for the benefit of my devisees, with the funds arising out of the sales of any of my real estate.

Ninthly. As it is my desire that my executrix may proceed in the execution of the several provisions of this my last will and testament with as little difficulty and embarrassment as possible, it is hereby directed that neither before her entering upon the performance of her duties as such executrix, nor at any time thereafter, shall she be required by any Judge or Justice of Probate, or any other person or persons, to enter into bond, or give any sureties for the due and

faithful execution and performance of her duties as such executrix; and I choose to trust entirely to her good judgment, diligence, and fidelity.

Tenthly. As it may contribute to the happiness of my said wife, after my decease, to have my niece, Anna Bortis, of Saratoga County, State of New York, reside with her and be a member of my said wife's family, and should my niece consent so to do, as an inducement thereto I authorize my said wife to convey, by a good and sufficient deed to the said Anna, any one-quarter section of my land which my said wife may select, to be the absolute property and estate of the said Anna, and her heirs and assigns forever.

Eleventhly and lastly. I do hereby nominate, constitute and appoint my beloved wife, Marion Bogardus, sole executrix of this my last will and testament.

In witness whereof I, the said John L. Bogardus, have to this my last will and testament, contained in these sheets of paper which are fixed together, set my hand and seal this second day of June, in the year of our Lord one thousand eight hundred and thirty-eight.

N. B. The words "which shall remain unsold" interlined between the fourth and fifth lines from the bottom, on the third page, were interlined before the signing and sealing this instrument.

Signed, sealed, published, and declared by the above named John L. Bogardus as and for his last will and testament, in presence of us, who at his request and in his presence have subscribed our names as witness thereto.

JOHN L. BOGARDUS.

Witnesses.
CHARLES KETTELLE,
JACOB GALE,
ONSLOW PETERS,
RUDOLPHUS ROULE.

I do solemnly swear that this writing contains the true last will and testament of the within named John L. Bogardus, deceased, so far as I know or believe, and that I will well and truly execute the same, by paying first the debts and then the legacies mentioned therein, as far as his goods and chattels will thereunto extend, and the law charge me, and that I will make a true and perfect inventory of all such goods and chattels, rights and credits as may come to my hands or knowledge, belonging to the estate of said deceased, and render a fair and just account of my executorship, when thereto required by law, to the best of my knowledge and abilities—so help me God.

MARION BOGARDUS.

Proved by Onslow Peters and Jacob Gale, two of the subscribing witnesses to the will, on 7th day of July, 1838, before

GEORGE B. PARKER,
Probate Justice of the Peace
for Peoria County.

STATE OF ILLINOIS,
Peoria County:

I, William H. Fessenden, Probate Justice of the Peace within and for said county of Peoria, do hereby certify that the foregoing is a full, true, perfect, and complete copy of the original last will and testament of John L. Bogardus, deceased, filed and recorded in my office on the 7th day of July, A. D. 1838, and duly proved as the last will and testament of said John L. Bogardus.

Given under my hand and seal, at my office at Peoria, in said county, this 12th day of June, A. D. 1847.

WM. H. FESSENDEN, [L. S.]
P. J. P.

STATE OF ILLINOIS,
Peoria County, ss:

I, William H. Fessenden, Probate Justice of the Peace within and for said county, do hereby certify that the foregoing is a full, true, and perfect copy of the record remaining in my office of the proceedings of the Probate Court of said county, at a special term thereof, held on the 7th day of July, A. D. 1838, at the Probate Office in Peoria, in said county, and of the probate of the last will and testament of John L. Bogardus deceased; and also of the appointment of Marion Bogardus, executrix of the said last will and testament, and of the letters testamentary to her thereon; and also of said will and proceedings thereon, which remain unrevoked, as appears by the records in my office.

Given under my hand and private seal (no official seal being provided), at my office in Peoria, in the County of Peoria, and State of Illinois, this 12th day of June, in the year of our Lord one thousand eight hundred and forty-seven.

WM. H. FESSENDEN, [SEAL.]
P. J. P.

UNITED STATES OF AMERICA,
State of Illinois, ss:

I, Horace S. Cooley, Secretary of State of the State of Illinois, one of the United States of America, and Keeper of the Great Seal of said State, do certify that Wm. H. Fessenden, who signed the foregoing certificates, was at the time of signing the same Probate Justice of the Peace in and for the County of Peoria and State of Illinois, duly elected and qualified to office, with full power, by the laws of this State, to issue certificates as aforesaid; that said certificates are in due form of law and by the proper officer, and that full faith and credit are due his official attestations.

In testimony whereof I have hereunto set my hand and the great seal of State, at the City of Springfield, this 12th day of June, in

the year of our Lord one thousand eight hundred and forty-eight, and of the Independence of the United States the seventy-second.

H. S. COOLEY,
Secretary of State.

4*th.* Said plaintiff read in evidence a deed from Marion Bogardus, executrix of John L. Bogardus, to Seth L. Cole, dated September 25th, 1845, in the words and figures following, to wit:—

This indenture, made this twenty-fifth day of September, eighteen hundred and forty-five, between Marion Bogardus of the City of Troy, in the State of New York, executrix and devisee of John L. Bogardus, late of Peoria County, Illinois, deceased, of the first part, and Seth L. Cole, of Peoria County, Illinois, of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of one thousand dollars, lawful money of the United States, to her in hand paid by the party of the second part at and before the ensealing and delivery of these presents, and the receipt whereof is hereby acknowledged, has given, granted, bargained and sold, aliened, enfeoffed and transferred, and by these presents doth give, grant, bargain, and sell, alien, enfeoff, transfer, convey and confirm unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim and demand which she now has, or which she may have in any manner whatsoever, of, in and to all that certain tract or parcel of land situate, lying, and being in the said county of Peoria, Illinois, known and designated as being the southeast fractional quarter of section nine (9), in township eight (8), north of range eight (8) east, with the rights, privileges and appurtenances thereunto in anywise appertaining, with the remainders, reversions, rents, issues, and profits thereof; to have and to hold the same, with the appurtenances, and all the estate, right, title, interest, claim and demand, which the said party of the first part had, has, or ever shall have in and to the same, and any and every part and parcel thereof, unto the said party of the second part, his heirs and assigns, forever: and the said party of the first part, for herself, her heirs, executors, and administrators, hereby covenants, promises and agrees to and with the said party of the second part, his heirs and assigns, that she, or they, shall and will at any and all times hereafter, make, execute, and deliver any and such other deed or assurances in law, as he or they, or his or their counsel learned in the law shall or may require, devise or advise for the more sure and effectual conveyance of the said premises, and the appurtenances, unto the said party of the second part, his heirs or assigns forever.

In witness whereof the said party of the first part has hereunto signed her name and affixed her seal, the day and year first hereinbefore mentioned, the six first words of the seventeenth line of the

first page being first partly witten on erasure, so as to read "*she* now *has*, or which *she*."

MARION BOGARDUS, [SEAL.]
Executrix.

Signed, sealed, and delivered in presence of
A. H. SHELDON,
JOHN CARPENTER.

Troy, N. Y., 25th September, 1845, received of Seth L. Cole the sum of one thousand dollars, being the consideration money specified in the said above deed. $1,000.

MARION BOGARDUS,
Executrix.

STATE OF NEW YORK,
Rensselaer County, to wit:

Be it remembered that on this twenty-fifth day of September, A. D. 1845, before the subscriber, Clerk of the Court of Common Pleas for the County of Rensselaer, in the State of New York, personally appeared Marion Bogardus, of the city of Troy, in the said county, to me personally well known as being the person who executed and signed the above and foregoing deed of conveyance, and acknowledged the same to be her act and deed, for the uses and purposes therein mentioned, and desired the same to be thus certified for record; and I further certify that the said Court of Common Pleas is, by the laws of the State of New York, a Court of Record.

In testimony whereof I have hereunto signed my name as the clerk thereof, and affixed the seal of the said Court, the day and year above written.

[SEAL.] AMBROSE H. SHELDON,
Clerk of the Court of Common Pleas of the County of Rensselaer, State of New York.

STATE OF ILLINOIS,
Peoria County:

RECORDER'S OFFICE.

I, Charles Kettelle, Recorder in and for said County, do hereby certify the foregoing deed is duly recorded in said office, in book P, pages 513 and 514, on this eighteenth day of October, A. D. 1845.

CHARLES KETTELLE,
R. P. Co.

5th. Said plaintiff then read in evidence a deed from Seth L. Cole to John Frink for one-third of the quarter section, dated October 29th, 1845, in the words and figures following:—

This deed, made this twenty-ninth day of October, eighteen hundred and forty-five, witnesseth, that Seth L. Cole, of the county of

25.

Peoria, in the State of Illinois, for and in consideration of the sum of two thousand dollars, to him in hand paid by John Frink, of the county of Cook, in the State of Illinois, the receipt of which is hereby acknowledged, doth by these presents grant, bargain, sell, remise, release and forever quit claim unto the said John Frink, his heirs and assigns forever, all that certain piece of land known and described as follows, to wit: the equal undivided third part of the southeast fractional quarter of section nine (9), in township eight (8), north of range eight (8), east of the 4th meridian, lying and being in the county of Peoria and State of Illinois, and containing twenty-three $\frac{93}{100}$ acres in the whole fraction, (excepting the lot conveyed by said Cole to C. R. May this day.)

To have and to hold the above described land and premises to him, the said John Frink, his heirs and assigns, forever; the said Seth L. Cole hereby covenanting, to and with the said John Frink, his heirs and assigns, that he, the said Seth L. Cole, will warrant and defend the title to be free and clear from the claim of himself, the said Seth L. Cole, his heirs and assigns, but against the claims of none others.

In testimony whereof, the said Seth L. Cole hath hereunto set his hand and seal the day and year above written.

SETH L. COLE. [SEAL.]

Done in the presence of
JACOB GALE.

STATE OF ILLINOIS,
County of Peoria, ss:

I, Jacob Gale, Clerk of the Circuit Court within and for the county and State aforesaid, do certify that this day personally appeared before me Seth L. Cole, who is personally known to me to be the same person whose name is subscribed to the within and foregoing deed, as having executed the same, and acknowledges that he executed the same.

In witness, my hand and seal of said Court, this 29th day of October, eighteen hundred and forty-five.

[SEAL.] JACOB GALE,
Clerk.

STATE OF ILLINOIS,
County of Peoria:

RECORDER'S OFFICE.

I, Charles Kettelle, Recorder in and for said county of Peoria, do hereby certify the within deed is duly recorded in said office, in Book S, page 283, on this 14th day of July, A. D. 1847.

CHARLES KETTELLE,
R. P. Co.

6*th*. Said plaintiff then read in evidence a deed from said Seth L.

Cole to said Frink, for one sixth part of said quarter section, dated May twenty-second, 1846, in the words and figures following, to wit:—

This indenture, made this twenty-second day of May, one thousand eight hundred and forty-six, between Seth L. Cole and Adelia A. Cole, his wife, now of the City of Washington, in the District of Columbia, parties of the first part, and John Frink, of Chicago, in the State of Illinois, party of the second part: whereas the said Cole, by a certain deed of Indenture, made in the year one thousand eight hundred and forty-five, conveyed, remitted, released, relinquished and quit-claimed to the said John Frink all his title, interest and claim of, in and to one undivided third part or share of all that certain tract, piece or parcel of land situate, lying and being in the county of Peoria, in the State of Illinois, known and designated as being the southeast fractional quarter of section nine (9), in township eight (8), north of range eight (8), east of the fourth principal meridian line; and whereas the said Cole and wife are now in like manner desirous of conveying to the said Frink an undivided sixth part of the said fractional quarter section, so that he may have in the whole an undivided half a moiety of the said tract, as also an undivided half a moiety of the other tract, hereinafter mentioned: Therefore, this Indenture witnesseth, that the said parties of the first part, for and in consideration of the sum of five hundred dollars, lawful money of the United States, to them in hand paid by the said party of the second part, before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, remised, released, relinquished, and quit-claimed, and by these presents do hereby bargain and sell, remise, release, relinquish and quit-claim unto the said party of the second part, his heirs and assigns forever, all their right and title, interest, claim and demand of, in and to one undivided sixth part or share of the said beforementioned southeast fractional quarter of section nine (9), in township eight, north of range eight, east of the fourth principal meridian line, and of, in and to one equal undivided half or moiety of the tract designated as lot number three (3), in range number nine (9), in Mills' Addition to Peoria, lying in the county of Peoria, State of Illinois together with all the rights, privileges and appurtenances, rents, issues and profits thereof: To have and to hold the same, with the appurtenances thereunto belonging or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever, to his and their only proper use, benefit and behoof forever, free, clear, and forever discharged of all claim thereto of, in or to any part thereof of the said parties of the first part: and the said parties of the first part, for themselves and their heirs, hereby covenant and agree, to and with the said party of the second part, his heirs and assigns, that they will forever warrant and defend the said granted and sold undivided parts or shares of the said tracts, unto the said party of the second part, his heirs or assigns, against all

persons whomsoever claiming or to claim the same, by, through, or under them or either of them, but not from or against the claim or claims of any others whomsoever.

In testimony whereof the said Seth L. Cole and Adelia A. Cole his wife, have hereunto set their hands and affixed their seals, at the City of Washington, on the day and year first hereinbefore written.

SETH L. COLE. [SEAL.]
ADELIA A. COLE. [SEAL.]

Signed, sealed and delivered in the presence of
SAM'L D. KING.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Samuel D. King, a notary public in and for the said county, do hereby certify that on the day of the date hereof Seth L. Cole and Adelia A. Cole his wife, both personally well known to me, personally appeared before me, in my county aforesaid, and acknowledged the execution and delivery of the above and foregoing deed to be their act and deed for the uses and purposes therein mentioned; and the said Adelia A. Cole, being by me examined privily and apart and out of the hearing of her said husband whether she doth execute and acknowledge the same freely and voluntarily, and without being induced to do so by fear or threats of an ill usage by her husband, or by fear of his displeasure, declareth and saith that she doth.

In testimony whereof I have hereunto signed my name and affixed my official seal as notary as aforesaid, at the City of Washington, this 22d day of May, A. D. 1846.

[SEAL.] SAM'L. D. KING,
Notary Public.

STATE OF ILLINOIS,
County of Peoria:

RECORDER'S OFFICE.

I, Charles Kettelle, Recorder of said County of Peoria, do hereby certify the within deed is duly recorded in said office, in Book S, pages 286 and 287, on this fourteenth day of July, A. D. 1847.

CHARLES KETTELLE,
R. P. Co.

7*th.* Said plaintiff then read in evidence a deed from said Frink to said Morgan, for one-half of said land, dated 19th December, 1846, in the words and figures following, to wit:—

This indenture, made and entered into this 19th day of December, in the year 1846, between John Frink, of the city of Chicago, in the State of Illinois, party of the first part, and Benjamin F. Mor-

gan, of the county of Hampden, in the State of Massachusetts, party of the second part, witnesseth that said party of the first part, for and in consideration of the sum of two thousand dollars, to him in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, has granted and sold, and by these presents does grant, sell, and quit claim to said party of the second part, his heirs and assigns forever, all the following described real estate, situate in the county of Peoria, in the State of Illinois, to wit: the one undivided half part of the southeast fractional quarter of section number nine (9), in township No. eight (8) north, in range No. eight east of the fourth principal meridian, together with all and singular the privileges and appurtenances thereto belonging, or in anywise appertaining; to have and to hold the same, and all the estate, right, title, and interest in law or equity, of said party of the first part, in and to the same, unto said party of the second part, his heirs and assigns forever.

In testimony whereof, I have hereunto set my hand and seal the day and year first above written.

JOHN FRINK. [SEAL.]

STATE OF ILLINOIS, SS:

On this 19th day of December, A. D. 1846, personally appeared before me, the undersigned, one of the Justices of the Supreme Court of the State of Illinois, John Frink, to me personally known to be the identical person described in, and whose name is subscribed to the foregoing deed of conveyance, as having executed the same, and acknowledged that he had executed the same for the uses and purposes therein expressed.

Given under my hand and seal at Springfield, in said State, this 19th day of December, A. D. 1846.

GUSTAVUS KOERNEY. [SEAL.]

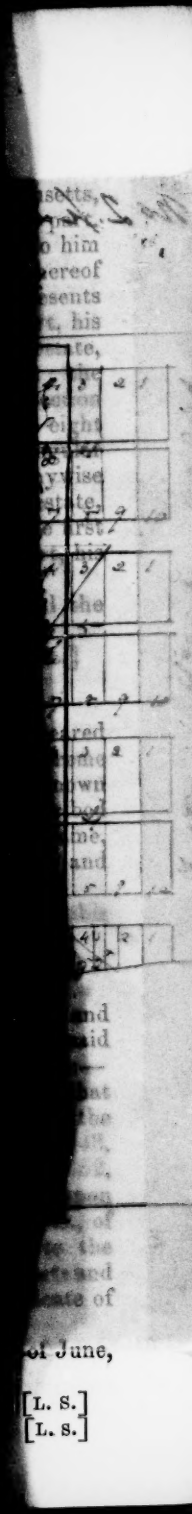
8th. Said plaintiffs next read in evidence a plat of Bigelow and Underhill's addition to the town of Peoria, laid out on the said quarter section of land, which is herein copied as follows, to wit:—

We, Lewis Bigelow and Isaac Underhill, do hereby declare that all that portion of the within plat which is included between the red lines, embracing the whole of blocks No. 37, 38, 39, 41, 42, 43, 49, 50 and 51, and part of blocks 34, 35, 40, 45, 46, 48 and 52, and which are situated partly upon the southwest and partly upon the southeast, fractional quarters of Section No. nine, 8 N., 8 E., of the 4th principal meridian, we have laid out as an addition to the town of Peoria, and we do hereby certify that all the lots, streets and alleys are of the size and dimensions as set forth in the certificate of the County Surveyor.

Given under our hands and seals, this twenty-second day of June, A. D. 1836.

LEWIS BIGELOW. [L. S.]
ISAAC UNDERHILL. [L. S.]

Ref. 1.1.1.1 Stockholm



STATE OF ILLINOIS,
Peoria County:

I, Cyrus Leland, a Justice of the Peace, hereby certify that, on this 22d day of June, A. D. 1836, the above named Lewis Bigelow and Isaac Underhill, who are personally known to me to be the persons whose names are subscribed to the above instrument of writing, as having executed the same, personally appeared before me, and acknowledged the same to be their free act and deed.

CYRUS LELAND,
Justice of Peace.

(For map see original, page 31.)

The lots inside the red lines are Bigelow and Underhill's Addition to the town of Peoria. Blocks 40, 41 and 42, Bigelow's only. Lots in block 34, are 72 feet front, by 171 feet deep. On blocks 48 and 49, 60 feet front on Water Street, by 125 feet deep. Blocks Nos. 50, 51 and 52, 60 ft. front, depth marked on the plat. The balance of the lots are 60 feet front by 171 feet deep. Alleys 18 feet wide, except the alley in block 48, which is 14 feet wide.

SURVEYOR'S OFFICE, PEORIA, *June 22d*, 1836.

I, Thomas Phillips, County Surveyor of Peoria County, do certify that the within named plat is a true and correct survey.

THOS. PHILLIPS.

STATE OF ILLINOIS,
Peoria County, ss:

I, Jacob Gale, Clerk of the Circuit Court, and ex-officio Recorder of said county, do hereby certify that the foregoing is a full, true, correct and complete copy of a plat of Bigelow & Underhill's Addition to the Town of Peoria, and of the deed, certificate of acknowledgment, and surveyor's certificate, accompanying and concerning the same, as they stand recorded in said Recorder's Office in said county, in Book G, at pages 30 and 31.

In testimony whereof, I have hereto set my hand and affixed the seal of said Court at Peoria, this 27th day of December, A. D. 1849.

JACOB GALE,
Clerk of Circuit Court, and Recorder of Peoria County, Ill.

9th. Said plaintiffs next read in evidence a certificate of survey of George C. McFadden, Surveyor of Peoria County, which is in the words and figures following:—

A survey of a part of the S. E. fractional quarter of section nine (9), T. 8 N., R. 8 E., for Benjamin F. Morgan; beginning at a post

on the bank of the Illinois River: thence N. 40½° W. three chains and four links, to a post from which the west corner of Curtenius and Griswold's warehouse bears S. 42½ E. fifty-seven links: thence north 50½ E. two chains and twenty-four links to a post on the line between the S. E. and N. E. quarters of said section nine, from which the north corner of Curtenius & Griswold's store bears S. 38½ W. eight links: thence east on the line between said quarter sections four chains and eighty links to a post on the bank of the river: thence down along the bank of said river to the place of beginning. The above survey made August 12th, 1847.

(Variation 7½°.)

G. C. McFADDEN,
C. S. P. C.

STATE OF ILLINOIS,
Peoria County, ss:

I, George C. McFadden, County Surveyor within and for the County of Peoria, in the State of Illinois, do hereby certify that the foregoing survey is a correct copy of the record of the survey above described, as fully as the same remains of record in my office.

Witness my hand and seal, this 12th day of August, A. D. 1847.

G. C. McFADDEN. [SEAL.]

10*th*. The defendants in open Court admitted themselves to have been in possession of the portion of said quarter section of land described in said certificate of survey at the time of the commencement of this suit.

The plaintiff here rested his case.

The defendants then offered to read to the jury in evidence, to sustain their defence to said suit, a deed from John L. Bogardus to Isaac Underhill, dated August 5, 1834, to the reading of which to the jury as evidence, the plaintiff by his counsel objected, and assigned to the Court the reasons of objection, that said deed bore date previous to the time said Bogardus acquired title, and that said deed contained no covenants or words under which a subsequently acquired title could enure. But the Court overruled the objection, and permitted said deed to be read in evidence to the jury, which was done, which deed is in the words and figures following, to wit:—

Know all men by these presents, that I, John L. Bogardus, of Peoria, of the County of Peoria and State of Illinois, in consideration of one thousand and fifty dollars, to me in hand paid by Isaac Underhill, of said Peoria, the receipt of which I do hereby acknowledge, do hereby grant, sell and convey unto said Underhill all my right and interest in and unto the southeast fractional quarter of section (9), in township (8), north range (8), east of fourth principal meridian in said Illinois, and also in and unto the ferry established across the Illinois River in said Peoria, together with all the boats

and other implements thereunto belonging; to have and to hold the same unto the said Underhill, his heirs and assigns forever, with all the privileges and appurtenances thereunto belonging.

In witness whereof, I have hereunto set my hand and seal, this 5th day of August, A. D. 1834.

JOHN L. BOGARDUS. [SEAL.]

Signed, sealed, and delivered in presence of
ORIN HAMLIN.

It was duly acknowledged before a Justice of the Peace on the same day, and recorded on the 13th day of the same month.

To which decision of said Court in overruling said objection, and permitting said deed to be read as evidence to the jury, said plaintiff by his counsel then and there excepted.

The defendant next read in evidence to the jury, a certificate of the Register of the Land Office at Quincy, dated ————, which is in the words and figures following, to wit:—

The defendants then introduced Charles Ballance as a witness, who, after being first duly sworn, testified that he was present at the time the said land was entered at the land office at Quincy, in 1837; that Isaac Underhill paid the money for the land; that he first saw patent in possession of Underhill, after it was issued. On cross-examination, said witness stated that the application for the land was in the name of Bogardus, but that at time of entry, Underhill claimed the land as his own, and claimed that he had purchased it; said Ballance further testified that after the date of said deed to Underhill, Bogardus told witness he had sold the land to Underhill, and that he never afterwards heard said Bogardus set up any claim to said land.

This was all the evidence given on the trial of the cause.

The plaintiff's counsel then moved the Court to exclude from the jury all the evidence given by the defendants, which motion the Court overruled, and directed and charged the jury that the plaintiff had no title to the premises claimed in the declaration, and that said evidence showed title out of plaintiff's, and directed the jury to find a verdict for the defendants and against the plaintiff, which they did.

To which decision of said Court in overruling said motion, and also to the said charge and direction by the Court to the jury, said plaintiff then and there excepted. It was also proved to the Court that the property in controversy exceeds in value two thousand dollars.

And said plaintiff prays the Judges of said Court to sign, seal, and make of record this his bill of exceptions, which is done and allowed.

NATH'L POPE, [SEAL.]
District Judge.

This day, to wit: the 7th day of June of the term of June, A. D. 1850, "It is ordered that this cause be stricken out from the docket."

This day, to wit: the 7th day of December, A. D. 1853, came the

plaintiff by his attorney, and filed his bond, which is in the words and figures following, to wit:—

Know all men by these presents, that we, Benjamin F. Morgan and John Frink, are held and firmly bound unto Alfred G. Curtenius and John L. Griswold, in the full and just sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Alfred G. Curtenius and John L. Griswold, or their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents, sealed with our seals, and dated this seventh day of December, in the year of our Lord one thousand eight hundred and fifty-three.

Whereas, lately at a Circuit Court of the United States, for the District of Illinois, in a suit depending in said Circuit Court, wherein the said Benjamin F. Morgan was plaintiff, and said Alfred G. Curtenius and John L. Griswold were defendants, judgment was rendered against the said Morgan; and the said Morgan having obtained a writ of error, and filed a copy thereof in the Clerk's Office of the said Circuit Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Alfred G. Curtenius and John L. Griswold, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at the City of Washington on the second Monday of December next.

Now the condition of the above is such, that if the said Benjamin F. Morgan shall prosecute said writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

BENJ'N F. MORGAN, [SEAL.]

By JOHN FRINK,
his Att'y in fact.

JOHN FRINK. [SEAL.]

I, William Pope, Clerk of the Circuit Court of the United States for the District of Illinois, do hereby certify the foregoing transcript to be a full, true and correct copy of all the proceedings in the case of Benjamin F. Morgan, plaintiff, against Alfred G. Curtenius and John L. Griswold, defendants, as the same appears from the files and records of my said office, (except the deed from John L. Bogardus to Isaac Underhill, which I have copied from the 2d vol. of "Gillman's Reports," by agreement of counsel; also, the Plat of Bigelow and Underhill's Addition, which I have copied from a plat on file belonging to the papers in the case of John Reynolds, Josiah E. McClure, and John McDougall, against Robert Forsyth, neither the original, nor a certified copy of either of the above papers having been furnished me.)

In testimony whereof, I have hereunto affixed the seal of said

Court, at Springfield, in the District aforesaid, and subscribed my name, this 7th day of December, A. D. 1853, and of our Independence the 78th.

[SEAL.]

WM. POPE,
Clerk.

Clerk's Fees.

150 fol's @ 15 c.	22 50
Copying map	5 00
Cert. and seal	55
	$28 05

There is no order on record, showing any application for appeal and allowance of same.

WM. POPE,
Clk.

UNITED STATES OF AMERICA, SS:

To Alfred G. Curtenius and John L. Griswold, greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Seventh Circuit and District of Illinois, wherein Benjamin F. Morgan is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Thomas Drummond, Judge of the United States District Court for the District aforesaid, this day of November, A. D. 1854, and of our Independence the seventy-ninth year.

THOMAS DRUMMOND.

BENJAMIN F. MORGAN
vs.
ALFRED G. CURTENIUS AND JOHN L. GRISWOLD. } Citation.

Served the within citation this 20th day of November, A. D. 1854, on Alfred G. Curtenius and John L. Griswold, by giving a true copy of the within to each of them.

Witness my hand and seal.

HARRY WITTON,
U. S. Marshal, District of Illinois.

Per M. R. OWEN,
Deputy Marshal.